

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3528

IN THE MATTER OF:

Served July 19, 1990

Application of PULLIN'S TOURS,)
INC., for Special Authorization to)
Conduct Charter Operations Pursuant)
to Contract with Congressional)
Youth Leadership Council, Inc.)

Case No. CP-90-02

By written request filed June 27, 1990, Pullin's Tours, Inc. (PTI or petitioner), seeks reconsideration of Order No. 3516, served June 8, 1990. As grounds for reconsideration petitioner relies on a compliance review conducted by the United States Department of Transportation (USDOT) on June 21, 1990.

The compliance review report submitted by PTI's president, Mr. Charles E. Pullin, Jr., notes that petitioner had revenue of \$378,000 for the period March 1, 1989, through February 28, 1990, from four vehicles. The following violations were found:

- (a) failure to maintain notation of annual review of driver's driving record in driver's qualification file (in each case checked) in violation of 49 CFR 391.51(b)(3);
- (b) failure to maintain inquire into driver's driving and employment record in driver's qualification file (in one of four cases checked) in violation of 49 CFR 391.51(c)(3); and
- (c) failure to require driver to prepare record of duty status in form and manner prescribed, i.e., shipping documents numbers or the shipper and commodity (in 26 of 103 cases checked involving four vehicles) in violation of 49 CFR 395.8(d)(11).

In his report USDOT's inspector recommends that petitioner do the following:

Ensure all drivers are fully and properly qualified before operating in interstate commerce. Maintain a complete file for each driver documenting the qualification process.

Ensure all drivers' records of duty status are accurate. Check records against supporting documents to verify accuracy. Prohibit falsification of duty status records by any PTI drivers.

Ensure all documents supporting records of duty status (such as toll, fuel, repair and other on-the-road expense receipts, as well as invoices, bills of lading, dispatch records, etc.) are kept on file for at least six months.

Obtain from any driver used for the first time or intermittently a signed statement showing the total time on duty during the preceding seven days and time at which last relieved from duty. File with records of duty status.

By letter dated June 21, 1990, and accompanying the compliance review report, Mr. Pullin states that USDOT ". . . assures me that we should qualify for satisfactory safety approval." By a second letter, dated June 26, 1990, Mr. Pullin further states that Mr. Kenneth E. Rogers, USDOT's safety inspector, ". . . has stated that there is no infraction which should prevent DOT from rating satisfactory safety." 1/ Copies of both letters accompanied PTI's filing of June 27, 1990.

American Coach Lines, Inc., a Virginia corporation (ACL-VA), is a protestant in the case and replied to PTI's petition. ACL-VA states that until USDOT issues a different rating, petitioner's rating will remain "conditional." ACL-VA asserts that, based on the compliance report submitted, it is doubtful that PTI is operating satisfactorily, given the "substantial proportion" of records checked indicating violations of motor carrier safety regulations. ACL-VA further states that safety ratings are assigned using a computerized software package that weighs many factors. Thus, an individual inspector cannot know what safety rating will be applied based on the compliance review. Finally, ACL-VA notes that the safety rating shows petitioner to be the operator of four (owned) buses, as opposed to the nine vehicles listed in its application. According to ACL-VA, "[a]pparently Pullin's is being untruthful to either this Commission or to the Department of Transportation. Whichever, such action certainly reflects negatively upon the truthfulness of Applicant."

In finding PTI unfit to receive additional authority, the Executive Director relied on the fact that PTI held a conditional safety rating from USDOT and the rationale of the Interstate Commerce Commission (ICC) articulated in its decision of November 18, 1988, Ex Parte No. 55 (Sub-No. 71) regarding issuance of new authority to carriers holding "conditional" safety ratings from USDOT. Order No. 3516 noted that PTI's conditional rating was almost three years old and showed the following problem areas:

1/ In that same letter Mr. Pullin states that "[d]ue to the fact that DOT, upon checking their records, ascertained that they had not made an inspection of our safety records since 1987, they immediately made such inspection without a written request, which is normal procedure." This may be the case. However, as noted in Order No. 3516, the Commission's Executive Director requested a re-audit by letter dated June 8, 1990; a copy of the letter was sent to Pullin's Tours, Inc.

Part 391 - Qualification of Drivers
Part 394 - Reporting of Accidents
Part 396 - Inspection, Repair, and Maintenance

The order further noted that the record provided no showing that PTI had requested a re-audit by USDOT or taken any corrective action to rectify the three problem areas listed above.

After thorough examination of the record in this case on reconsideration, the Commission cannot find even an allegation of either legal or factual error. PTI does not dispute that its USDOT safety rating was "conditional" at the time of the order. PTI does not assert that any corrective actions were taken to rectify the problem areas focused on by USDOT. Nor does PTI take issue with the Executive Director's reliance on the ICC's decision cited *supra*. Petitioner's sole ground for seeking reconsideration is the fact that USDOT has re-audited its operations, and the USDOT inspector conducting the audit stated that he believed PTI's safety rating would be up-graded from "conditional" to "satisfactory" as a result of that re-audit. This situation constitutes neither legal nor factual error and, thus, petitioner's application for reconsideration will be denied. These same circumstances do constitute changed factual conditions, however. Therefore, pursuant to Commission Rule No. 27-02, the Commission will reopen this case on its own initiative in order that these conditions may be considered in its decision.

Upon review of the entire record in this case, the Commission finds that the requirements of Commission Regulation No. 70 have been met to the extent the contract with Congressional Youth Leadership Council, Inc. (CYLC), pertains to transportation between points in the Metropolitan District. 2/ Addressing only those issues raised on reconsideration and reopening, the Commission notes that petitioner has recently been re-audited by USDOT. Although no new safety rating has yet been issued, it seems likely that PTI may soon possess a satisfactory safety rating. The only other issue on the record concerns the number of buses intended to be used for the contract. The record reflects that, due to a change in contract requirements, only four buses per session will be used during the contract term as opposed to the nine vehicles originally proposed. As a result, on June 1, 1990, PTI's president and Mr. Eddie Sowers, a representative of Richard's Bus Company, cancelled a lease agreement for five buses.

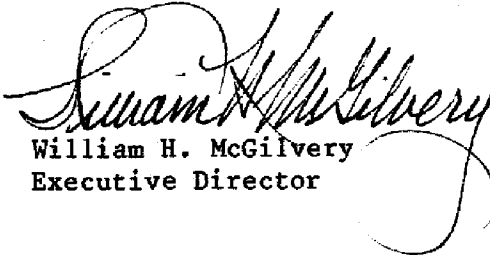
The application will be conditionally granted. PTI has a current certificate of insurance on file with the Commission. PTI's executed contract with CYLC is part of this application. Upon filing an original and one copy of a tariff cover sheet in the form and as worded in the appendix to this order and a "satisfactory" safety rating resulting from USDOT's inspection on June 21, 1990, an appropriate

2/ The contract is specific as to contracting entities, equipment requirements, and term. However, the contract is not specific as to points to be served. PTI has indicated those points in its application.

authorization shall issue. Otherwise, the application will stand denied in its entirety upon issuance of USDOT of a less than "satisfactory" safety rating resulting from its inspection on June 21, 1990.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:



William H. McGilvery
Executive Director

Appendix
Order No. 3528

WMATC TARIFF NO. 2

PULLIN'S TOURS, INC.

Showing rates, fares and charges
for transportation of passengers
in charter operations
pursuant to contract with
Congressional Youth Leadership
Council, Inc.

Between Points in the Metropolitan District
(except transportation solely within Virginia)

ISSUED: May 16, 1990

EFFECTIVE: Upon issuance of SP-147-02

ISSUED BY:

Charles E. Pullin, Jr., President
PULLIN'S TOURS, INC.
1125 Old Rixeyville Road
Culpeper, VA 22701